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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/773,316	02/09/2004	Yasuhiro Matsumura	1021.43503X00	1058
20457 7590 11/16/2007 ANTONELLI, TERRY, STOUT & KRAUS, LLP 1300 NORTH SEVENTEENTH STREET SUITE 1800 ARLINGTON, VA 22209-3873			EXAMINER HARRIS, ALANA M	
			ART UNIT 1643	PAPER NUMBER
			MAIL DATE 11/16/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/773,316

Applicant(s)

MATSUMURA ET AL.

Examiner

Alana M. Harris, Ph.D.

Art Unit

1643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 09/04/2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-10, 12, 15-20 and 22 is/are pending in the application.
- 4a) Of the above claim(s) 1-9 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 10, 12, 15-20 and 22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>05/24/2007</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Request for Continued Examination***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on September 4, 2007 has been entered.

2. Claims 1-10, 12, 15-20 and 22 are pending.

Claims 1-9, drawn to non-elected inventions are withdrawn from consideration.

Claims 10 and 20 have been amended.

Claim 22 has been added.

Claim 13, 14 and 21 has been cancelled.

Claims 1-10, 12, 15-20 and 22 are examined on the merits.

### ***Withdrawn Grounds of Rejection***

#### ***Claim Rejections - 35 USC § 112***

3. The **NEW MATTER REJECTION** of claims 10, 12, 15-20 under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement is withdrawn in view of the amendments made to the claims. Claims 13, 14 and 21 have been cancelled.

***Maintained and New Grounds of Rejection***

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. The rejection of claims 10, 12, 15-20 and new claim 22 under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Application Publication number 2003/0059839 (filed May 21, 2002), and further in view of U.S. Patent number 6,176,836 B1 (issued January 23, 2001) and WO 97/09600 (filed April 25, 2002/ IDS reference number 5, submitted December 5, 2006) is maintained. Claims 13, 14 and 21 have been cancelled.

Applicants argue the patent application publication does not disclose a cell recovering apparatus containing a bag for storing a sample comprising a buffer solution and a stool at room temperature and a filter, see page 12 of the Remarks submitted July 25, 2007, last paragraph. Applicants also assert the stomacher-type bag of the publication is used for the enrichment of *Listeria* and the heat activating step recited in section 0104 of page 6 is in regard of pathogens instead of cancer as recited in the present claims, see page 13, 3<sup>rd</sup> paragraph. Applicants further arguments asserting the publication does not establish a base on which the patent and WO document can be applied. These points of view and arguments have been carefully considered, but found unpersuasive.

Applicants' are reminded their claims contain open language, i.e. *comprising*, hence additional steps and characteristics within the apparatus of the publication does not preclude the prior art from reading on the claims. Irrefutable is the fact the publication does teach a stomacher bag and does not teach away from recovering epithelial cells and while the publication does read on collecting fecal samples to detect gastrointestinal diseases it does not preclude one of ordinary skill in the art from implementing the disclosed cell recovery apparatus listed in the claims. For the reasons of record and those listed herein the rejection is maintained and made.

6. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Alana M. Harris, Ph.D. whose telephone number is (571)272-0831. The Examiner works a flexible schedule, however she can normally be reached between the hours of 7:30 am to 6:30 pm, with alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Larry R. Helms, Ph.D. can be reached on (571) 272-0832. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

**ALANA M. HARRIS, PH.D.**

**PRIMARY EXAMINER**



Alana M. Harris, Ph.D.

13 November 2007